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CONSTITUTIONAL LAW—MECHANIC'S LIEN—EQUAL PROTECTION OF LAWS—STATUTE ALLOWING ATTORNEY'S FEES.—The appellant attacks the constitutionality of a statute which provides that the plaintiff in a suit to enforce a mechanic's or materialman's lien, if successful, shall recover a reasonable attorney's fee not to exceed 10% of the amount of the judgment, regardless of whether he recovers the entire amount sued for. Fla. Comp. L. Ann. § 2218. *Held*, the statute was unconstitutional since it denied to the defendant in such suits the equal protection of the laws. *Union Terminal* v. *Turner Construction Co.* (5 C. C. A. 1918) 247 Fed. 727.

It is well established that the legislature may legislate as to classes under proper circumstances. Such classification, however, cannot be arbitrary, but must be based upon some reasonable distinction. *Braceville Coal Co.* v. *The People* (1893) 147 Ill. 66, 35 N. E. 62; *Gulf, etc., Ry.* v. *Ellis* (1896) 165 U. S. 150, 17 Sup. Ct. 255. Under this power statutes for assessing double damages or attorney's fees upon the defendant in favor of the plaintiff, when successful, have been sustained in various cases; such as in actions for damages to live stock caused by the failure of the defendant railroad to fence its tracks as required by law, *Kansas Pac. Ry.* v. *Mower* (1876) 16 Kan. 573; *Missouri Pac. Ry.* v. *Humes* (1885) 115 U. S. 512, 6 Sup. Ct. 110; *Railroads* v. *Crider* (1892) 91 Tenn. 489, 19 S. W. 618, or in suits against a railroad company for damages from fire caused by its locomotive, *Atchison, etc., R. R.* v. *Matthews* (1898) 174 U. S. 96, 19 Sup. Ct. 609, or in suits against common carriers for overcharges. *Dow* v. *Beidelmen* (1887) 49 Ark. 455; *Burlington, etc., R. R.* v. *Dey* (1891) 82 Iowa 312, 48 N. W. 98. The ground upon which these statutes are sustained is that it is a reasonable use of the police power to impose a penalty for such wrongful acts. See *Peoria, etc., Ry.* v. *Duggan* (1884) 109 Ill. 537. But in cases where statutes impose attorney's fees upon the defendant in favor of the plaintiff in an action to enforce a mechanic's or a materialman's lien there is a division of authority as to the constitutionality of such statutes. If the statutes provide that the plaintiff is entitled to attorney's fees, only if he recovers the full amount sued for, *Vogel* v. *Pekoc* (1895) 157 Ill. 339, 42 N. E. 386; *contra, Hocking Valley Coal Co.* v. *Rosser* (1895) 53 Oh. St. 12, 41 N. E. 263, or if the defendant acted in bad faith in his refusal to settle, *Williamson* v. *Liverpool, etc., Ins. Co.* (1905) 141 Fed. 54, they have been held constitutional. But if the statutes impose attorney's fees upon the defendant even though the plaintiff fails to recover the full amount sued for and regardless of the defendant's good or bad faith, some courts have refused to sustain them, *Davidson* v. *Jennings* (1900) 27 Colo. 187, 60 Pac. 354; *Atkinson* v. *Woodmansee* (1903) 68 Kan. 71, 74 Pac. 640; *contra, Dell* v. *Marvin* (1899) 41 Fla. 221, 26 So. 188, on the ground that they impose a penalty upon the defendant even though he acted with reasonable cause in refusing to pay more than the plaintiff was entitled to recover. See *Hocking Valley Coal Co.* v. *Rosser, supra.* It would seem that this reasoning is sound and that, therefore, the decision in the principal case is correct.

ELECTIONS—VACANCY IN CONGRESS—REAPPORTIONMENT.—In 1916 one Fitzgerald was elected to the Sixty-fifth Congress from the Seventh New York District. In 1917 the legislature of New York changed the boundaries of districts from the third to the tenth, inclusive, so that